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Landlord Liability in West Virginia for Criminal Acts on the Premises

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LANDLORD LIABILITY IN WEST VIRGINIA FOR CRIMINAL ACTS ON THE PREMISES

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I. INTRODUCTION

Mr. Miller is attacked in his car on the grounds of the mobile home park where he lives.1 Ms. Jack is beaten with a golf club by an intruder when she visits a friend’s apartment.2 Should the landlord be held liable for their injuries? For several reasons, courts have traditionally declined to impose a duty on one person to protect another from the criminal acts of a third party.3 Among these reasons is the principle that the intentional criminal act of a third party is a superseding cause of the harm which it inflicts.4 Courts also hesitate to impose

such a duty because of the common law notion that criminal activity is unforeseeable as a matter of law.⁵

Thus, landlords traditionally have had no duty to protect their tenants from criminal acts.⁶ Until recently, landlords were generally immune from liability for unintended injury to their tenants.⁷ In the past few decades, however, the residential landlord’s duty to prevent injury to tenants by maintaining the leased premises in a fit and habitable condition has been firmly established.⁸ This obligation to maintain the structural integrity of the residence has led to an expanded duty of care on the landlord’s part to protect tenants from harm arising from the premises, including harm from the criminal acts of third parties.⁹

In recent years, the issue of whether a landlord should bear the cost of crimes against the tenant has received much attention, and a trend toward increasing landlord liability for criminal acts has emerged.¹⁰ Victimized tenants have offered several theories to justify imposing liability upon the landlord, yet, courts considering these theories have not formulated any bright-line rules. Instead, the debate has generated a “scattering of opinions,”¹¹ and a variety of different approaches, even within single jurisdictions.¹²

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5. PAGE, supra note 3, at 211.
7. Michael J. Davis & Phillip E. DeLaTorre, A Fresh Look At Premises Liability As Affected By the Warranty of Habitability, 59 WASH. L. REV. 141, 141 (1984) [hereinafter Davis & DeLaTorre].
8. Id. at 153.
10. See generally Gary D. Spivey, Annotation, Landlord’s Obligation to Protect Tenant Against Criminal Activities of Third Persons, 43 A.L.R.3d 331 (1972 & Supp. 1995) [hereinafter Spivey].
11. Miller, 455 S.E.2d at 824.
12. Glesner, supra note 9, at 688 (explaining that courts within the same jurisdiction have adopted different approaches regarding the basis for landlord liability, as “even appellate courts have misinterpreted or ignored their own state supreme court’s analysis of this issue”).
This Note will discuss those theories which have been commonly espoused in support of the imposition of landlord liability for criminal acts on the premises. It will also review the position the Supreme Court of Appeals of West Virginia has adopted with respect to these theories of liability. In addition, this Note will explore the policy considerations behind the court's position, as well as the practical implications of the decisions establishing this position. Finally, it will propose an approach for defining the landlord's duty of care with respect to the protection of tenants from the criminal acts of third parties.

II. BACKGROUND

At common law, a lease was viewed as a conveyance of land, or a sale of the premises for a term, to which the doctrine of caveat emptor ("let the buyer beware") applied. According to this principle, a landlord was thought to have fully discharged his duties by signing the lease. Thereafter, he was only obligated to leave the tenant in quiet possession of the premises. The tenant did not expect any additional services from the landlord, and typically did not receive any. This type of landlord-tenant relationship was sufficient to meet the needs of tenants at early common law, when the vast majority of leases were agricultural. Under such leases, the primary objective was to obtain farm land. Any buildings that may have existed on the premises were of secondary importance.

As the United States shifted from a largely rural, agrarian society to an urban, industrialized society, this ancient notion of hands-off leases no longer met the needs of the modern tenant. Modern courts

13. MILTON R. FRIEDMAN, FRIEDMAN ON LEASES 3 (2d ed. 1983) [hereinafter FRIEDMAN].
15. FRIEDMAN, supra note 13, at 5.
17. FRIEDMAN, supra note 13, at 5-6.
18. Id. at 5.
19. Id.
20. Id.
21. Id. at 6.
came to realize that “[w]hen American city dwellers, both rich and poor, seek ‘shelter’ today, they seek a well known package of goods and services — a package which includes not merely walls and ceilings, but also adequate heat, light and ventilation, . . . secure windows and doors, . . . and proper maintenance.”22 Thus, the modern lease contemplates a continuous flow of services from the landlord, as opposed to a single determinative act.23 In acknowledgment of this reality, and beginning in the 1970s, a flood of legislation was enacted establishing a residential landlord’s duty to keep the premises in a fit and habitable condition.24 In 1978, West Virginia codified this implied warranty of habitability in residential leases.25

III. THEORIES OF LIABILITY FOR CRIMINAL ACTS ON THE PREMISES

The traditionally narrow view of a landlord’s duty of care as to the tenant’s protection has widened considerably. As a result, landlords have been exposed to increasing liability for injuries arising from crimes committed on their rental property.26 Victimized tenants have suggested a number of theories supporting a landlord’s duty to protect against crime on the premises, including claims based on either a showing of negligence or breach of a statutory or contractual obligation.27 The imposition of a duty on the landlord arising from negli-

23. FRIEDMAN, supra note 13, at 6.
24. Davis & DeLaTorre, supra note 7, at 153.
26. See Kline v. 1500 Mass. Ave. Apartment Corp., 439 F.2d 477, 486-87 (D.C. Cir. 1970) (holding landlord liable when a tenant was assaulted and robbed in the common hallway outside her apartment); Ten Assoc. v. McCutchen, 398 So. 2d 860, 863 (Fla. Dist. Ct. App. 1981) (finding landlord liable for tenant’s rape when assailant entered through an apartment window); Jacobs v. Helmsley-Spear, Inc., 469 N.Y.S.2d 555, 557 (Civ. Ct. 1983) (stating that landlord was liable for a tenant’s robbery at gunpoint on outside walkway to garage of the apartment building); Duncavage v. Allen, 497 N.E.2d 433, 438 (Ill. App. Ct. 1986) (holding that landlord’s failure to reasonably maintain areas of the apartment building under his control was proximate cause of tenant’s murder).
27. Spivey, supra note 10, § 2(a).
gence principles will be considered first. This is the most commonly espoused justification for a landlord's duty to protect, and was the theory advanced in the first case of this kind considered by the Supreme Court of Appeals of West Virginia.

A. Tort Liability for Criminal Acts on the Premises

Tenants attempting to prove that injuries suffered from third party criminal acts were the ultimate result of landlord negligence, must first satisfy the threshold requirement of establishing the landlord's duty to protect them from crime. In general, a person does not have a duty to protect others from the deliberate criminal acts of third parties, but exceptions to this general rule are recognized in two situations: (1) when there is a special relationship giving rise to a duty of protection against intentional misconduct, and (2) when a person's affirmative acts or omissions expose another to a foreseeable high risk of injury from intentional misconduct.

1. Special Relationship Theory

The special relationships which have been found to impose a duty of care on one person to protect another from the criminal acts of a third party include those between common carrier and passenger, parent and child, and innkeeper and guest. The imposition of such a duty is

28. See Atkinson v. Harman, 158 S.E.2d 169, 174 (W. Va. 1967) (stating that if the plaintiff fails to establish the existence of a duty of care owed by the defendant to the plaintiff, then no case of prima facie negligence can be established).

29. PAGE, supra note 3, § 9.22, at 211. Policy reasons for applying this rule to the landlord-tenant relationship include:

[J]udicial reluctance to tamper with a traditional, common-law concept; the notion that the deliberate criminal act of a third person is the intervening cause of harm to another; the difficulty that often exists in determining the foreseeability of criminal acts; the vagueness of the standard the owner must meet; the economic consequences of imposing such a duty; and conflict with the public policy that protecting citizens is the government's duty rather than a duty of the private sector.


a matter of public policy; because one party has submitted to the control of the other, and has lost some measure of ability to protect him or herself, the party possessing greater control should take reasonable steps to protect the other from foreseeable harm by third parties.  

Most courts have held that no such special relationship exists between a landlord and tenant. This reluctance to categorize the landlord-tenant relationship as one that triggers a duty to protect, stems from the common law notion that a lease is a conveyance of land. Under this approach, the landlord fully discharged his duties when he entered the lease, and had virtually nothing to do with the premises thereafter. Since the landlord typically had less control over the leased premises than the tenant, there was no practical reason to impose upon him a duty to protect the tenant from crime occurring there.

However, it has been suggested that the modern landlord more closely resembles the innkeeper, the proprietor of the only multiple-dwelling structure known at common law, than the early common law landlord. A greater duty of protection was imposed upon innkeepers because their temporary guests had little incentive and no authority to repair the premises to increase their safety. Similarly, tenants of urban apartments in today's highly mobile society lack incentive and control to make such repairs. Thus, courts sometimes find that today's landlord is more like the innkeeper, and less like the common

32. Kline v. 1500 Mass. Ave. Apartment Corp., 439 F.2d 477, 483 (D.C. Cir. 1970). Kline is a landmark case, being the first to find an affirmative duty of protection on the part of the landlord. Id. at 483-84. The court in Kline drew an analogy between the landlord-tenant relationship and the innkeeper-guest relationship. Id. at 485.
33. Spivey, supra note 10, § 2(a). Although most jurisdictions still fail to see the landlord-tenant relationship as a special relationship, an increasing minority of jurisdictions recognize that the landlord-tenant relationship is analogous to the innkeeper-guest relationship. Glesner, supra note 9, at 703.
34. FRIEDMAN, supra note 13, at 3.
35. Id. at 5.
36. Haines, supra note 6, at 309.
38. Id.
39. Id. at 1078.
law landlord who typically leased his land for farming, and exercised no real control over the premises.40

In Miller v. Whitworth,41 the Supreme Court of Appeals of West Virginia entertained an issue of first impression. For the first time the court addressed the question of whether the landlord-tenant relationship itself gives rise to a duty to protect the tenant from the criminal acts of third parties. Whitworth involved the resident of a mobile home park, Mr. Miller, who was attacked in his car on the premises.42 One evening, Mr. Miller heard a disturbance outside of his trailer, and discovered two men in his driveway near his cars.43 The two men fled in their own vehicle upon being discovered, but Mr. Miller followed them in his car to obtain a license plate number since he did not know whether they had caused any damage.44 After getting the license number Mr. Miller tried to return to his trailer, but the two men turned around and followed him.45 Before he could get out of his car, one of the men, Mr. Whitworth,46 smashed the driver’s side window of Mr. Miller’s car, shattering the glass, and injuring Mr. Miller’s eye, arm, and face.47

Mr. Miller filed suit against the corporation operating the mobile home park, alleging that it was negligent in failing to take reasonable measures to protect its tenants from criminal battery.48 The circuit court entered summary judgment in favor of the landlord, and Mr. Miller appealed.49

41. 455 S.E.2d 821 (W. Va. 1995).
42. Id. at 823.
43. Id.
44. Id.
45. Id.
46. Mr. Whitworth allegedly resided with a friend at the mobile home park, but the court did not make a distinction here between a crime committed against a tenant by someone else living on the premises, and a crime committed by an intruder. Whitworth, 455 S.E.2d at 823.
47. Id.
48. Id.
49. Id.
In determining whether the mobile home park operator had a duty to protect its tenants from criminal attack, the Supreme Court of Appeals first considered the special relationship theory.\textsuperscript{50} The court noted that most jurisdictions have preserved the common law notion that there is no special relationship between a landlord and tenant which would give rise to a duty to protect the tenant from third party criminal activity.\textsuperscript{51} The court rejected the notion that the landlord-tenant relationship is analogous to the innkeeper-guest relationship.\textsuperscript{52} After stressing that the landlord is not meant to be an insurer of the tenant’s safety, the court held that the landlord does not have a duty to protect tenants from the criminal activity of a third person merely because there is a landlord-tenant relationship.\textsuperscript{53}

2. Affirmative Act or Omission Theory

Jurisdictions rejecting the special relationship theory do not begin their analysis with an assumption that the landlord owes a duty to protect tenants. Nevertheless, many courts have noted that while a landlord is not meant to be an insurer of his tenants’ safety, a landlord is certainly not a mere bystander.\textsuperscript{54} These courts have thus been willing to find a duty of protection under certain circumstances.\textsuperscript{55} According to this approach, a landlord whose own acts or omissions increases the risk of harm from crime owes a duty to exercise reasonable care to protect his or her tenants.\textsuperscript{56} Thus, while in the special relationships approach, foreseeability of harm was merely the test for establishing proximate cause, in this special circumstances approach, foreseeability is also the basis for establishing a landlord’s duty of protection.\textsuperscript{57}

\begin{itemize}
\item \textsuperscript{50} Id. at 825.
\item \textsuperscript{51} Whitworth, 455 S.E.2d at 825.
\item \textsuperscript{52} Id. at 825-26.
\item \textsuperscript{53} Id. at 826.
\item \textsuperscript{54} Whitworth, 455 S.E.2d at 826 (citing Christy E. Harris, Note, The Duty Of A Modern Landlord To Protect His Tenants From Crime, 29 HOW. L.J. 149, 162 (1986)).
\item \textsuperscript{55} Id.
\item \textsuperscript{56} Spivey, supra note 10, § 2(a). See also RESTATEMENT (SECOND) OF TORTS § 302B (1965) (explaining that an exception to the general rule that one person has no duty to protect another from crime exists where that person’s affirmative acts or omissions have created a foreseeable high risk of harm from intentional misconduct).
\item \textsuperscript{57} Glesner, supra note 9, at 703. Under this approach, the probability and severity of
\end{itemize}
The question of whether a duty of care exists is a question of law to be answered by the court, so the judge alone determines whether a landlord could reasonably foresee that his own acts or omissions put the tenant at an unreasonable risk of harm from crime. Since "courts are concerned with the effect of their decisions on norm articulation, they are more likely to apply stricter standards of foreseeability in establishing a duty than are juries, which consider foreseeability as a matter of proximate cause and are primarily motivated by individualized justice."

A tenant may be able to prove that a landlord whose affirmative acts have increased the risk of harm from crime owes a duty to protect tenants by remedying the dangerous situation such acts have created. However, it is more difficult to show that such a duty has arisen from a landlord's omission, or failure, to act. A duty arising from an omission is based on the notion that the landlord should have foreseen that some condition of the premises invited crime, and that the landlord was in a better position to rectify the situation than the tenants.

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harm to the tenant are balanced against the landlord's cost in avoiding the harm. *Id.* at 704. Factors which are frequently considered in this balancing test include:

[T]he closeness of the connection between the defendant's conduct and the injury suffered, . . . the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

*Id.* (quoting *Rowland v. Christian*, 443 P.2d 561, 564 (Cal. 1968)).


59. *Glesner, supra* note 9, at 703 (explaining that because the judge weighs foreseeability at the preliminary stage, more cases are dismissed prior to a full adjudication under the special circumstances approach).

60. *Id.*

61. *Spivey, supra* note 10, § 7(b). See also *Prager v. City of New York Hous. Auth.*, 447 N.Y.S.2d 1013, 1016 (Civ. Ct. 1982) (holding landlord liable in damages to tenant whose apartment was ransacked by intruder who gained access to apartment through lock-out service provided by landlord, since no form of personal identification was required from persons claiming to be locked out); *Cooke v. Allstate Management Corp.*, 741 F. Supp. 1205, 1210 (D.S.C. 1990) (refusing to grant summary judgment for management of apartment complex that left unsecured ladder outside, when tenant sued her landlord for injuries sustained in a rape attempt by an attacker who entered through her balcony via the ladder).

62. *Spivey, supra* note 10, § 8(b).

63. *Id.* § 2(a).
In most cases, tenants seeking to impose landlord liability based on an omission assert that prior crime on the premises triggered a duty on the part of the landlord to take precautions for their safety.\(^{64}\) In most jurisdictions, in order to show that prior crimes gave rise to a landlord’s duty to protect, “[w]hat is required to be foreseeable is the general character of the event or harm, . . . not its precise nature or manner of occurrence.”\(^{65}\)

In *Whitworth*, after concluding that no special relationship exists between a landlord and tenant which gives rise to a duty of protection, the Supreme Court of Appeals of West Virginia turned to the second exception to the general rule to determine whether an omission on the part of Mr. Miller’s landlord imposed a duty to protect Mr. Miller from the criminal battery he suffered.\(^{66}\) The court emphasized that the circumstances giving rise to a landlord’s duty of protection vary according to the facts of each case, and on the basis that it was examining an emerging area of the law, declined to anticipate the sort of situations which may invoke such a duty.\(^{67}\) The court rejected the proposition that prior unrelated crimes on the premises can impose a duty on a landlord to protect a tenant, stating that since crime is foreseeable anywhere in the United States, it would be absurd to require landlors to protect tenants in this manner:

The trend toward enlarging the duty of landlords and other private parties to provide security against criminal acts, even in the absence of agreements to do so, has the potential of reaching absurd proportions. One can foresee landowners, proprietors of restaurants, stores, theaters, banks, schools and, indeed, public buildings being civilly responsible for all crimes on their premises.\(^{68}\)

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64. See generally Spivey, supra note 10.
65. Glesner, supra note 9, at 706-07 (quoting Wylie v. Gresch, 236 Cal. Rptr. 552, 556 (Ct. App. 1987)). Most jurisdictions have rejected the notion that the prior crimes must closely match the type of crime committed against the tenant seeking to impose liability. *Id.* at 706.
67. *Id.*
The tenant in *Whitworth* did submit evidence of various police reports of crimes that had previously occurred on the premises of the mobile home park. However, the court held that no duty existed because "none of these reports would have reasonably caused the owner to have focused upon a specific individual such as Mr. Whitworth." Thus, the *Whitworth* court adopted a fairly conservative approach in defining the parameters of a landlord's duty to protect tenants from crime occurring on the premises. In addition, *Whitworth* can be read to suggest that before a duty of protection will be imposed, a tenant must show that prior crimes on the premises should have notified the landlord of both the type of crime committed against the tenant, and the specific identity of the assailant. The court predicted that a shortage of low-income housing would ensue if landlords in high crime areas were burdened with a duty based merely on known criminal activity in the neighborhood. Reasoning that tenants would often be unable to bear the cost of increased security that landlords would surely pass on to them, the court declined to recognize a duty of protection based on unrelated incidents of criminal activity on the premises.

*Whitworth* establishes that in West Virginia, victimized tenants seeking to recover in tort from their landlord for crime on the premises must first show that the landlord's own acts or omissions exposed them to an unreasonable risk of harm from such crime. The Supreme Court of Appeals of West Virginia has also addressed two variations of the more conventional issue of whether a landlord has a duty to protect his or her tenants from crime; namely, whether a landlord has a duty to protect a tenant's social guest from crime on the premises, and whether a landlord can try to prevent crimes committed by one tenant against another by refusing to rent to persons with prior criminal convictions.

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69. *Whitworth*, 455 S.E.2d at 827.
70. *Id.*
71. In contrast, a majority of jurisdictions have rejected the notion that a landlord must have had notice of prior crimes closely matching the crime committed against the complaining tenant. *See Glesner, supra* note 9, at 706.
72. *Whitworth*, 455 S.E.2d at 827.
73. *Id.*
a. Landlord’s Duty to Tenant’s Social Guest

There are situations under which a landlord is obligated to protect tenants against criminal acts on the premises. Although no basis for such a duty was found in Whitworth, the court acknowledged that certain circumstances may give rise to a duty of protection. But, does a landlord ever have a duty to protect a tenant’s social guest from the criminal acts of a third party? Entrants upon land of another fall under one of three categories: (1) trespassers; (2) licensees; or (3) invitees. The property owner’s duty of care increases along this spectrum from a mere duty to refrain from willfully or wantonly injuring a trespasser, to a duty to make the premises reasonably safe for an invitee. While a number of courts have criticized the often harsh results of this classification system, many jurisdictions, including West Virginia, still recognize such distinctions among entrants.

An entrant’s status is typically a question of fact, but certain types of entrants are recognized to be licensees as a matter of law, including

74. Id. at 826.
75. RESTATEMENT (SECOND) OF TORTS § 329 (1965). A trespasser is “a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor’s consent or otherwise.” Id.
76. Id. § 330. A licensee is “a person who is privileged to enter or remain on land only by virtue of the possessor’s consent.” Id.
77. Id. § 332. There are two types of invitees — public invitees and business visitors. Id. A public invitee is “a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.” Id. A business visitor is “a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of land.” Id.
78. PAGE, supra note 3, § 2.2, at 9.
79. Id. § 4.2, at 64.
80. Id. § 6.1, at 121. This system “increase[s] the opportunity for directed verdicts for possessors of land by placing entrants in categories which, as a matter of law, place[] the injury-producing condition or activity outside the scope of the legal duty owed by the owner or occupier.” Id. § 6.1, at 121.
social guests.\textsuperscript{82} Thus, 

[t]he vast majority of courts hold that the social guest, because he enters his host's premises for companionship, diversion, and the enjoyment of hospitality, and not for any mutual economic benefit accruing to himself or to his host, is a licensee as a matter of law, even though he may have been expressly invited by his host.\textsuperscript{83}

The Supreme Court of Appeals of West Virginia determined a landlord's duty to protect a tenant's social guest from criminal acts on the premises in \emph{Jack v. Fritts},\textsuperscript{84} another case of first impression. The plaintiff, Ms. Jack, went to the defendant landlord's building to visit Ms. Meade, a friend residing there.\textsuperscript{85} When Ms. Jack knocked on the door, it opened, and an intruder,\textsuperscript{86} who was standing behind the door, struck her with a golf club, beating her to the ground.\textsuperscript{87} After demanding money from Ms. Jack, the intruder ordered her to go into the bedroom and undress.\textsuperscript{88} While in the bedroom, Ms. Jack tried to open the window to escape, but it was sealed shut.\textsuperscript{89} However, the intruder never came into the bedroom, and when Ms. Jack felt that he had left the apartment, she found Ms. Meade, and the two left to get help.\textsuperscript{90}

Ms. Jack asserted that a landlord owes the same duty to a tenant's guest as is owed to the tenant.\textsuperscript{91} The court, however, rejected this view.\textsuperscript{92} Since there was no evidence that Ms. Jack was a member of

\begin{footnotesize}
\footnotesize{82. PAGE, supra note 3, § 3.6, at 40.}
\footnotesize{83. Id. § 3.21, at 60.}
\footnotesize{84. 457 S.E.2d 431 (W. Va. 1995).}
\footnotesize{85. Id. at 433. The plaintiff alleged that she was the tenant's cousin, but because plaintiff had denied being related to Ms. Meade during her deposition, the court disregarded this allegation. Id. at 433 n.1.}
\footnotesize{86. The intruder had assaulted the tenant immediately before Ms. Jack's arrival. Id. at 434. Ms. Meade voluntarily opened the door to the intruder, who had come to her door earlier, looking for the apartment of another tenant. Id. at 434 n.3.}
\footnotesize{87. Jack, 457 S.E.2d at 434 n.4.}
\footnotesize{88. Id.}
\footnotesize{89. Id.}
\footnotesize{90. Id.}
\footnotesize{91. Jack, 457 S.E.2d at 436.}
\footnotesize{92. Id.}
\end{footnotesize}
the “ordinary family of normal habit” living in the apartment building, the duty owed her was that which a landlord owes a licensee.

A property owner has no obligation to protect a licensee against dangers arising from the existing condition of the premises. Rather, a licensee takes the premises as the licensee finds it, and subject to all of the dangers which exist upon entry. Thus, no duty is owed to a licensee, “except to refrain from wilfully or wantonly injuring him.” So, the court in Jack v. Fritts held that because a tenant’s social guest is a mere licensee to which a landlord owes only the duty of refraining from willful or wanton injury, a landlord has no duty to protect the tenant’s social guest from crime on the premises.

b. Criminal Acts of Other Tenants

Landlords sometimes have a duty to protect their tenants from the criminal acts of strangers on the premises. But, is there ever a duty to protect one tenant from the criminal acts of another tenant? Maybe. Tenants injured by their co-tenants who are able to show that their landlord had reason to know of the offending tenant’s proclivity for crime or dangerous disposition are often granted recovery. For in-

93. Id. A landlord has a “duty to exercise ordinary care to maintain in reasonably safe condition, premises owned by him and used in common by different tenants.” Lowe v. Community Inv. Co., 196 S.E. 490, 491 (W. Va. 1938). A “family-apartment tenancy requires of the landlord the care due the ordinary family of normal habit.” Id.
96. Id.
98. Jack, 457 S.E.2d at 437. But cf. Margolis v. 2640 Realty Corp., 611 N.Y.S.2d 554, 555 (App. Div. 1994) (stating that a landlord has a duty to take reasonable security measures to protect his tenants, or others who might reasonably be expected to be on the premises, from the intentional criminal acts of others if he knows or should know that the premises has been the scene of recurrent criminal activity).
99. See Simmons v. New York, 562 N.Y.S.2d 119, 120 (App. Div. 1990) (finding that landlord owed duty to tenant who was shot by another tenant, who was the roommate of a drug dealer about whom the victim had warned her fellow tenants at a tenants’ meeting); Waldon v. Housing Auth. of Paducah, 854 S.W.2d 777, 779 (Ky. Ct. App. 1991) (reversing dismissal of action against public housing authority, where tenant was killed on the premises and housing authority knew that the killer had repeatedly threatened the victim and was
stance, in *Samson v. Saginaw Professional Building, Inc.*, a groundbreaking case which addressed this issue, a commercial landlord was held liable for injuries to a tenant’s employee who was assaulted in a common area by a patient of a state mental clinic which rented space in the same building. The court held that the landlord had a duty to secure the common areas of the building, because he knew the mental facility frequently treated patients with violent criminal backgrounds. Before a landlord will be held liable for the crimes of one tenant against another, it must be shown that the landlord had reason to know of the offending tenant’s criminal potential, and was in a position to prevent the victimized tenant’s injuries.

As witnessed above, courts have held that landlords who become aware of the dangerous propensities of a tenant already residing on the premises have a duty to take reasonable steps to protect against foreseeable crime committed by such tenant. Another issue is whether residing in the project without their permission, yet took no action to eject the assailant or secure the premises); *Salerno v. Hart Fin. Corp.*, 521 So. 2d 234, 235 (Fla. Dist. Ct. App. 1988) (allowing mobile home tenant injured by fellow tenant to recover from landlord, if landlord had prior notice of similar crimes committed in the mobile home park). *But see Morgan v. Dalton Management Co.*, 454 N.E.2d 57, 61 (Ill. App. Ct. 1983) (holding that landlord was not liable to injured tenant when another tenant threw acid on her, notwithstanding the victim’s reports to landlord of threats received from the assailant, where burden and consequences of imposing duty upon landlord to guard against such injury would be unreasonable and overly intrusive).

100. 224 N.W.2d 843 (Mich. 1975).
101. The court in *Samson* did not make a distinction between the duties of residential and commercial landlords.
102. *Samson*, 224 N.W.2d at 850.
103. *Id.* at 849.
104. *See Sturgeon v. Cumutt*, 34 Cal. Rptr. 2d 498, 502-03 ( Ct. App. 1994) (dismissing negligence action against landlord by woman who was shot by a tenant while visiting another tenant, because the landlord’s knowledge that the tenant abused alcohol and possessed firearms was not sufficient grounds to have the assailant evicted); *Morton v. Kirkland*, 558 A.2d 693, 695 (D.C. 1989) (finding that plaintiff who was assaulted by co-tenant could not recover from landlord where she failed to prove that the landlord could have anticipated the crime, or that there was sufficient grounds to have the assailant evicted); *Gill v. New York Hous. Auth.*, 519 N.Y.S.2d 364, 371-72 (App. Div. 1987) (holding that city housing authority did not breach duty to tenant stabbed in common area of the premises by mentally ill tenant, where housing authority could not have foreseen the dangerousness of the assailant based on information concerning a prior nonviolent incident involving the assailant).
a landlord also has a duty to try to keep those with criminal tendencies out by screening prospective tenants. Predicting which tenants are likely to commit future crimes can be a complicated task.\textsuperscript{106} It is difficult for landlords to find reliable crime predictors that do not invade the privacy of potential tenants or impermissibly discriminate against them.\textsuperscript{107} For example, landlords cannot discriminate against prospective tenants on the basis of race, color, sex, national origin, or other such characteristics in an attempt to weed out criminals.\textsuperscript{108}

While the specific issue of whether or not landlords in West Virginia have an affirmative duty to screen prospective tenants has not been addressed, a private landlord in West Virginia may consider prior criminal convictions in screening applicants for apartments. In \textit{Collins v. AAA Homebuilders, Inc.},\textsuperscript{109} the Supreme Court of Appeals of West Virginia recognized that "[i]n choosing his tenants, a landlord has a legitimate interest in protecting his property, and an interest in protecting the health, safety, and welfare of his other tenants."\textsuperscript{110} Thus, a private landlord in West Virginia may consider any criteria in screening prospective tenants, including criminal convictions, subject only to constitutional and statutory limits.\textsuperscript{111} The court found that the refusal of a private landlord to contract with an applicant because of a prior criminal conviction is not unconstitutional, and is not illegal as against the public policy of West Virginia.\textsuperscript{112}

Although private landlords in West Virginia have broad screening powers, the relatively conservative approach adopted by the Supreme

\begin{itemize}
\item \textsuperscript{106} Glesner, \textit{supra} note 9, at 780.
\item \textsuperscript{107} \textit{Id.}
\item \textsuperscript{108} See the Fair Housing Amendments Act of 1988, 42 U.S.C. \S 3604 (1988).
\item \textsuperscript{109} 333 S.E.2d 792 (W. Va. 1985).
\item \textsuperscript{110} \textit{Id.} at 793.
\item \textsuperscript{111} \textit{Id.}
\item \textsuperscript{112} \textit{Collins}, 333 S.E.2d at 794. The court noted that protected classes (such as color, race, religion, etc.) usually involve status, whereas a person's prior criminal conviction involves individual responsibility. \textit{Id.} at 794 n.6. A well-reasoned dissenting opinion in \textit{Collins} asserted that the majority had inaccurately characterized the issue as one involving a private landlord, when in fact the plaintiff had applied for tenancy in a federally-subsidized housing project, and thus, "[t]he same standards of nondiscrimination, equal opportunity, and due process [were] imposed upon [the] participating private owner[] as would be required if the housing were managed by the government itself." \textit{Id.} at 795 (Miller, J., dissenting).
\end{itemize}
Court of Appeals with respect to landlord liability for crimes committed on the leased premises suggests that no affirmative screening duty would be imposed on landlords.

B. A Landlord's Contractual or Statutory Duty of Protection

Courts are usually willing to impose a duty on landlords to protect tenants from crime on the premises when an express contractual basis can be found for such a duty. However, absent some warranty or representation by the landlord that the premises are safe, or that certain security measures have been taken, a duty of protection is generally not found to be an implied term of the lease. But, if a landlord does make such representations and the tenant relies on these reassurances of security in signing the lease, or pays increased rent for them, then a duty will most likely be found.

Similarly, liability is more readily found where a state statute or municipal regulation imposes an express duty upon the landlord to provide security. However, before a statutory duty will be found, the court must determine that the plaintiff was within the class of persons

113. See Glesner, supra note 9, at 697-99 (discussing the willingness of courts to assess liability on the basis of statements or promises inducing tenants to rely on the landlord to provide security measures).

114. See Spivey, supra note 10, § 6(b).

115. See Thompson v. Cane Gardens Apartments, 442 So. 2d 1296, 1298 (La. Ct. App. 1983) (finding breach of contract where lessor's agents assured tenants that security measures would be taken to provide safe environment for the elderly); Rhodes v. United Jewish Charities, 459 N.W.2d 44, 46 (Mich. Ct. App. 1990) (reversing summary judgment for landlord, who had agreed to provide guard service for parking lot, where a tenant's employee was assaulted); Secretary of Hous. & Urban Dev. v. Layfield, 152 Cal. Rptr. 342, 343 (App. Dep't Super. Ct. 1978) (holding landlord's failure to provide adequate security guards to be a breach of contract where the landlord distributed a handbook containing assurances of adequate security, along with letter stating that the handbook was part of the tenant's lease by reference); Brownstein v. Edison, 425 N.Y.S.2d 773, 774-75 (Sup. Ct. 1980) (allowing administratrix of murdered tenant's estate to claim breach of warranty of habitability, where landlord had assumed duty to provide some protection to tenants by installation of front door locks, for which landlord had obtained a rental increase). But see Cooke v. Allstate Management Corp., 741 F. Supp. 1205, 1216 (D.S.C. 1990) (finding that landlord's advice that apartment complex was safe was merely a casual and general comment for which no liability would be imposed).

116. Glesner, supra note 9, at 700.
intended to be protected by the statute, and that the injury suffered was the type of harm against which the statute was intended to protect. Generally, when a statute requiring a landlord to maintain the premises in a safe and habitable condition is phrased in terms of general safety, and does not specifically require that security measures be taken, courts will construe “safety” narrowly, holding that it refers only to the physical or structural condition of the premises, and not its susceptibility to crime.

In *Jack v. Fritts*, the Supreme Court of Appeals of West Virginia also addressed the question of whether the state’s warranty of habitability statute imposed a duty on the landlord to provide protection from third party criminal acts. Ms. Jack, the appellant, proposed that West Virginia Code Section 37-6-30(a)(2) and Section 16-16-

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118. See Deem v. Charles E. Smith Management, 799 F.2d 944, 946 (4th Cir. 1986) (holding that the words “safe condition” and “safety” as they appeared in the Virginia Residential Landlord and Tenant Act referred to protection of tenants from injuries caused by failures in the building itself); Mengel v. Rosen, 735 P.2d 560, 562 (Okla. 1987) (holding that the words “safe”, “fit”, and “habitable”, as they appeared in the Residential Landlord and Tenant Act provision requiring the landlord to keep the tenant’s dwelling unit in a fit and habitable condition, referred exclusively to the physical condition of the premises and had no relation to a duty to provide protection to the tenant against the criminal acts of third parties); Ashley v. Balcor Property Management, Inc., 423 S.E.2d 14, 15 (Ga. App. Ct. 1992) (finding that a landlord’s statutory requirement to exercise ordinary care in keeping the premises safe does not render him liable to the tenant for the criminal conduct of third parties, for one is ordinarily not charged with the duty of anticipating acts mala per se); Cramer v. Balcor Property Management, 441 S.E.2d 317, 319 (S.C. 1994) (stating that South Carolina Landlord-Tenant Law imposing a duty on landlord to keep the premises in a fit and habitable condition does not include a duty to provide protection to tenants from criminal activity by third parties).
120. Jack v. Fritts, 457 S.E.2d 431 (W. Va. 1995). The court noted that because Ms. Jack was a mere licensee, her standing to argue a duty arising from either the statutory warranty of habitability or any implied warranty of habitability, was questionable. *Id.* at 438. However, the court decided to resolve this issue, as it would surely arise again in the future. *Id.*
121. W. VA. CODE § 37-6-30(a)(2) (1985). (Providing that a residential landlord shall: Maintain the leased property in a condition that meets requirements of applicable health, safety, fire and housing codes, unless the failure to meet those requirements is the fault of the tenant, a member of his family or other person on the premises with his consent . . . ).
2, when read in pari materia, establish a public policy to provide safe housing by engaging in crime prevention, and therefore, impose a duty on landlords to undertake reasonable security measures. In other words, the appellant argued that since the housing cooperation laws were enacted in part to prevent the crime that resulted from a shortage of safe and sanitary dwellings for persons of low income, and because the warranty of habitability statute requires landlords to comply with applicable health and safety codes, residential landlords have a duty to provide security for their tenants.

The court concluded that West Virginia Code Sections 37-6-30 and 16-16-2, when read in pari materia, do not impose a duty upon landlords to protect tenants from the criminal acts of third parties. Noting that there is no definition of “safety” within West Virginia’s warranty of habitability statute, the court adopted the view of those jurisdictions which hold that residential landlord and tenant statutes do not require landlords to maintain the premises so as to protect tenants from criminal acts. On the basis that West Virginia Code Section 16-16-2 already existed when the warranty of habitability statute was enacted, the court found that the absence of any reference to Section 16-16-2 within the warranty of habitability statute indicated that the Legislature

122. W. Va. Code § 16-16-2 (1995). (Providing: It has been found and declared in the ‘Housing Authorities Law’ . . . that there exist in the State unsafe and unsanitary housing conditions and a shortage of safe and sanitary dwelling accommodations for persons of low income; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; and that the public interest requires the remedying of these conditions. It is hereby found and declared that the assistance herein provided for the remedying of the conditions set forth in the ‘Housing Authorities Law’ constitutes a public use and purpose and an essential governmental function for which public moneys may be spent and other aid given; that it is a proper public purpose for any state public body to aid any housing authority operating within its boundaries or jurisdiction or any housing project located therein, as the state public body derives immediate benefits and advantages from such an authority or project; and that the provisions hereinafter enacted are necessary in the public interest).

123. Jack, 457 S.E.2d at 438.

124. Id.

125. Id. at 439.

126. Id.
did not intend the word “safety” as used in the habitability statute to include any policy of crime prevention mentioned in Section 16-16-2. The court also held that the implied warranty of habitability in residential leases, as established by Teller v. McCoy, does not impose any duty to protect tenants against crime, because the court’s decision in Teller was not intended to impose upon the landlord a greater burden than that codified in the warranty of habitability statute. The appellant in Jack also argued that the landlord’s breach of municipal code provisions requiring buildings to have an illumination of at least sixty watt light bulbs, and that every window be capable of being easily opened, established a case of prima facie negligence. However, the court held that these municipal provisions are similar to the warranty of habitability statute, in that they were enacted to protect tenants from structural defects of the premises, and not to impose a duty of protection against the criminal acts of unknown third parties over whom a landlord has no control.

IV. SUMMARY OF WEST VIRGINIA’S POSITION

Victimized tenants in West Virginia cannot rely on a statute to establish a landlord’s duty to protect against crime on the premises. Nor can they rely on an implied warranty of habitability of the leased premises to show such a duty. Finally, victimized tenants cannot show that a duty of protection exists because of any special relationship between a landlord and tenant. However, such tenants may be

127. Id.
130. Id. at 437 n.7.
131. Id. Even if these municipal regulations were found to give rise to a duty of crime prevention on the part of the landlord, the appellant probably would not have been able to show that their violation was the proximate cause of her injuries. For example, no further injury came to appellant from her inability to open the bedroom window, as the intruder did not pursue her into the room.
133. Id.
able to establish a duty of protection by pointing to express contractual provisions or specific representations wherein the landlord assured them that adequate security measures would be taken for their safety.\textsuperscript{135} Tenants may also be able to rely on municipal regulations to show that a duty of protection exists, so long as the regulations explicitly require the landlord to undertake security measures.\textsuperscript{136} West Virginia tenants who are the victims of crime may also be able to show that the landlord had a duty to protect them from a foreseeably high risk of crime which his acts or omissions created.\textsuperscript{137} However, \textit{Miller v. Whitworth} suggests that in order to establish this duty, the tenant must bear the heavy burden of showing that the landlord had reason to foresee both the type of crime committed against the tenant, and the specific identity of the assailant.\textsuperscript{138}

\section*{V. Proposal}

There are situations where a residential landlord in West Virginia should be liable for a tenant's injuries arising from crime on the premises.\textsuperscript{139} However, landlords should not be held to a standard approaching strict liability, such as that suggested by the special relationships theory of liability. Unlike large manufacturers that can spread the cost of a defective product over thousands of consumers,\textsuperscript{140} landlords are not in an economic position to effectively allocate the cost of tenants' injuries.\textsuperscript{141} Imposing such a heavy burden on landlords for

\begin{footnotesize}
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\item [135.] See supra notes 113-115 and accompanying text.
\item [136.] See supra notes 116-118 and accompanying text.
\item [137.] See \textit{Whitworth}, 455 S.E.2d at 826 (recognizing that there are circumstances in which a landlord's affirmative acts or omissions may impose a duty to protect tenants from the crimes of a third party on the premises, but declining to impose such a duty based on the facts of the case before it).
\item [138.] \textit{Id.} at 827.
\item [139.] See discussion supra Part V.
\item [140.] See Blankenship v. General Motors Corp., 406 S.E.2d 781, 784 (W. Va. 1991) (discussing how manufacturers spread the cost of accidents arising from defects in their products by collecting what amounts to an insurance premium from each purchaser of their product, and then buying commercial insurance or creating self insurance funds to cover any damages they have to pay to injured plaintiffs).
\item [141.] See \textit{Miller v. Whitworth}, 455 S.E.2d 821, 827 (W. Va. 1995) (expressing concern over the fact that landlords will be forced to pass the high cost of security on to their
\end{itemize}
\end{footnotesize}
tenants' safety would surely result in a shortage of affordable housing, since landlords would be forced to pass this expense on in the form of substantial rent increases.\textsuperscript{142} Landlords generally owe some duty to protect a tenant from crime where the tenant has relied on an express contractual provision or explicit representation by the landlord that measures would be taken to help ensure the tenant's safety.\textsuperscript{143} But, such contractual remedies alone are not sufficient, because many tenants are not in a position to bargain with their landlord for increased safety measures.\textsuperscript{144}

Courts have been unable to formulate any bright-line rule governing when a landlord has a duty to protect tenants from criminal acts on the premises. The recent decisions of the Supreme Court of Appeals of West Virginia regarding this issue have shown a reluctance to impose a threshold duty on landlords to undertake even basic security measures to protect the premises from crime. Perhaps this reluctance stems from a recognition that the legislature is the more appropriate forum for the imposition of such duties.\textsuperscript{145} Admittedly, existing landlord-tenant law in West Virginia was enacted with a view toward ensuring the physical structure of the premises, and makes no mention on its face of protecting tenants from crime.\textsuperscript{146} Thus, it is understandable that the court has declined to read a deeper meaning into existing requirements. However, the modern tenant needs more than just sturdy walls and a roof overhead. Increasing crime rates dictate that a residence must have certain minimum safety features to be truly habitable.\textsuperscript{147} Yet, the current state of landlord-tenant law in West Virginia

\begin{itemize}
  \item \textsuperscript{142} \textit{Id.}
  \item \textsuperscript{143} See supra notes 113-115 and accompanying text.
  \item \textsuperscript{144} See Teller v. McCoy, 253 S.E.2d 114, 118 n.4 (W. Va. 1978) (quoting Green v. Superior Court, 517 P.2d 1168, 1173 (Cal. 1974)) (explaining that a shortage of low and moderate cost housing has left many tenants with little bargaining power).
  \item \textsuperscript{145} See Cooper v. Gwinn, 298 S.E.2d 781, 785-86 (W. Va. 1981) (reaffirming the principle that the legislative branch of government has the primary responsibility for translating public policy into law).
  \item \textsuperscript{146} See W. VA. CODE § 37-6-30 (1985).
  \item \textsuperscript{147} See Glesner, supra note 9, at 679-81 (discussing in detail statistics of rising crime rates in the U.S.).
\end{itemize}
provides no incentive for landlords to implement even minor security measures.

The Legislature must address the reality that most tenants are not able to bargain with their landlords for necessary security measures. Minimum security standards should be enacted which impose a duty on landlords to protect their tenants from crime on the premises. These standards should reflect the fact that landlords are not able to foresee all crime, and should not be made an insurer of their tenants’ safety, while in turn recognizing that landlords can often prevent opportunistic crime by creating an environment that is less inviting for criminals.148 For example, it has been shown that a criminal’s primary objective when choosing a location for crime is to reduce his chance of being seen, not to find the wealthiest victim.149 In addition, criminologists have found that most burglars will not spend more than ten minutes to pry open a door, or more than five minutes to open a window.150 Thus, landlords can help deter criminals by increasing the visibility of crime with a brightly-lit premises, and decreasing the accessibility of the dwelling with effective locks on each window and door. Such minimal safety measures will not be sufficient to eliminate crime in

148. A number of courts have recognized that the physical environment often influences a criminal’s choice of location or victim, and have held landlords liable for failing to take reasonable steps to decrease the likelihood of crime on their premises. See Johnston v. Harris, 198 N.W.2d 409, 411 (Mich. 1972) (permitting tenant to maintain an action against landlord for failing to provide locks in a vestibule leading to the entrance of the apartment building); Francis T. v. Village Green Owners Assoc., 723 P.2d 573, 580 (Cal. Ct. App. 1983) (stating that a landlord’s failure to provide adequate lighting can support a claim of negligence); Duncavage v. Allen, 497 N.E.2d 433, 437-38 (Ill. App. Ct. 1986) (reversing dismissal of complaint alleging that landlord was proximate cause of tenant’s murder by an intruder, where lights outside of tenant’s apartment were burned out, surrounding weeds were high enough to conceal a person, an unsecured ladder was accessible to unauthorized persons on the property, and the intruder testified that he chose the building due to its dilapidated condition); Rowe v. State Bank of Lombard, 531 N.E.2d 1358, 1368 (Ill. 1988) (holding landlord liable for failing to secure the passkey from unauthorized persons); Cooke v. Allstate Management Corp., 741 F. Supp. 1205, 1206 (D.S.C. 1990) (refusing to grant summary judgment for landlord who left unsecured ladder near victimized tenant’s apartment).


150. Johnson, supra note 4, at 239-40 (citing THOMAS A. REPPETO, RESIDENTIAL CRIME (1974)).
every situation, but could serve as a relatively low cost way to prevent many criminal incidents.  

The West Virginia Legislature could impose a duty of protection on landlords without making them insurers of their tenants’ safety by limiting the landlord’s liability. More specifically, the Legislature could define the affirmative security measures the landlord must undertake, and limit the landlord’s liability to injuries causally related to a failure to comply with such duties. The West Virginia Legislature took a similar approach in limiting the liability of ski operators and commercial whitewater outfitters. Recognizing that these sports contribute significantly to the economy of West Virginia, but possess inherent risks essentially impossible to eliminate, the Legislature limited the liability of ski operators and whitewater outfitters to injuries caused by their failure to comply with specific, enumerated duties. Similar legislation governing a landlord’s duty to provide security might read as follows:

Section 1. Residential Landlord’s Duty to Provide Security
Every residential landlord shall:

1. equip every exterior door of the dwelling with both a key knob lock and a deadbolt lock which meet the requirements of the State Building Code, and maintain the same in satisfactory working condition;
2. equip every exterior sliding glass door of the dwelling with both a sliding glass door pin lock and a sliding glass door handle latch or security bar which meet the requirements of the State Building Code, and maintain the same in satisfactory working condition;
3. equip every exterior window of the dwelling with a window latch which meets the requirements of the State Building Code, and maintain the same in satisfactory working condition;

151. The outward appearance of the premises can be instrumental in a criminal’s decision to commit crime thereon, as “[c]rime rates rise significantly in areas where street lights and windows are broken, where streets and vacant lots are strewn with refuse and where graffiti artists prevail.” Glesner, supra note 9, at 789 (quoting Tom Morganthau et al., The War At Home: How To Battle Crime, NEWSWEEK, Mar. 25, 1991, at 35).
153. Id.
154. The first three subsections of the proposed legislation have been modeled after a comprehensive Texas statute requiring all residential landlords to furnish certain security
(4) furnish all indoor and outdoor common areas in a multi-family living facility with light at an intensity of at least eight (8) footcandles\textsuperscript{155} during hours of darkness;
(5) keep all passkeys in a secure area accessible only to landlord and the superintendent(s) and manager(s), if any, of the premises;
(6) require identification from any person let into a dwelling through a lock-out service, unless landlord recognizes such person as a tenant without resort to identification;\textsuperscript{156}
(7) change the locks on every exterior door and window of the dwelling at the end of each tenancy.

Section 2. Liability of Landlord.
No residential landlord is liable to a tenant for injury arising from the criminal acts of a third party on the premises unless such injury is causally related to the violation of a duty set forth in Section 1 of this article. However, nothing in this article limits in any way liability which otherwise exists for injury to a tenant due to landlord’s breach of an express contract to provide security for such tenant.

The proposed legislation should apply to public housing projects as well as private landlords,\textsuperscript{157} and should afford protection not only for

\textsuperscript{155} The Illuminating Engineering Society of North America recommends that indoor passage areas in residences be illuminated at an intensity of at least five to ten footcandles. ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA, IES LIGHTING HANDBOOK § 2-5 (John E. Kaufman ed., 1981). The Society recommends that the outdoor areas surrounding a building be illuminated at an intensity of at least five footcandles. Id. § 2-14.

\textsuperscript{156} This requirement could help prevent a situation similar to that in \textit{Prager v. New York Housing Authority}, where an intruder claiming to be a tenant locked out of his apartment obtained a key from the landlord, which he later used to gain entry to the victimized tenant’s dwelling. 447 N.Y.S.2d 1013 (Civ. Ct. 1982).

\textsuperscript{157} Courts do not recognize an implied warranty of habitability in residences operated as public housing projects:

In contrast to housing projects in the private sector, the construction and operation of public housing are projects established to effectuate a stated national policy “to remedy the unsafe and unsanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income.” \textit{42 U.S.C. § 1401.}

As such, the implication of a warranty of habitability in leases pertaining to public housing units is a warranty that the stated objectives of national policy have been and are being met. We feel that the establishment of any such warranty that national policy goals have been attained or that those goals are being maintained is best left to that branch of government which established the objectives. Alexander v. United States Dep’t of Hous. & Urban Dev., 555 F.2d 166, 171 (7th Cir. 1977). Since providing tenants with security against crime on the premises is not part of the national policy behind the establishment of public housing projects, there is no reason why
tenants, but for all persons reasonably expected to be on the premises.\footnote{158}

VI. CONCLUSION

A modern residence must have certain minimum security features to be truly habitable. The Supreme Court of Appeals of West Virginia has acknowledged that there are circumstances under which a landlord has a duty to protect tenants from crime on the premises, but has declined to find the existence of such a duty in the cases before it to date. The Legislature, however, could provide basic home security for all tenants without causing a shortage of housing by limiting tort liability for crime on the premises to injuries arising from the landlord’s failure to comply with specific security duties. Such legislation recognizes that landlords can reduce the opportunity for crime on the premises, but are not in a position to insure the tenants’ safety. Those tenants who are able to bargain for more security than the legislation provides would still have a remedy in contract for the landlord’s breach of an agreement to furnish such security.

Legislation of this nature requires a great deal of thought, since it opens the door to recovery for some injured tenants, while abruptly closing the door on those whose injury falls beyond the parameters of the statute.\footnote{159} Nevertheless, the statutory give-and-take embodied by a

\footnotetext{158}{Although West Virginia still recognizes the common law distinctions among entrants, other jurisdictions have come to realize that these classifications are arbitrary and harsh: A man’s life or limb does not become less worthy of protection by the law nor a loss less worthy of compensation under the law because he has come upon the land of another without permission or with permission but without a business purpose. Reasonable people do not ordinarily vary their conduct depending upon such matters, and to focus upon the status of the injured party as a trespasser, licensee, or invitee in order to determine the question whether the landowner has a duty of care, is contrary to our modern social mores and humanitarian values. The common law rules obscure rather than illuminate the proper considerations which should govern determination of the question of duty. Rowland v. Christian, 443 P.2d 561, 568 (Cal. 1968).}

\footnotetext{159}{Admittedly, the proposed statutes in this Note serve only as models, and are not
limited liability act may be the most realistic way to provide tenants with basic security measures, without depriving them of an affordable place to live.

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